

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA

v.

EMMANUEL LEE VESTAL,

Defendant.

)
)
) Case No. 2:14CR00001-02
)

) **OPINION**
)

) By: James P. Jones
) United States District Judge
)

Emmanuel Lee Vestal, Pro Se Defendant.

Emmanuel Lee Vestal had filed a pro se motion titled, “Motion for Plain-Error Review Pursuant to Supreme Court Case *Molina-Martinez vs. United States*” (ECF No. 681). Vestal had disagreed with the dismissal of his prior Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 as time barred and also had argued that, *inter alia*, counsel rendered ineffective assistance. Consequently, the court instructed Vestal, in accordance with *United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015), to abandon either claims about the prior § 2255 motion’s disposition or claims about the original conviction and sentence.

In his response, Vestal continues to challenge the imposed sentence and does not challenge the adjudication of the prior § 2255 motion. Consequently, Vestal’s requests are treated as a Motion to Vacate, Set Aside, or Correct Sentence. *See*,

e.g., United States v. Winestock, 340 F.3d 200, 206-07 (4th Cir. 2003). Vestal already had a § 2255 motion dismissed with prejudice, and he does not establish that the United States Court of Appeals for the Fourth Circuit has authorized him to file a successive § 2255 motion. Accordingly, the construed § 2255 motion must be dismissed without prejudice as successive pursuant to 28 U.S.C. § 2255(h).

DATED: December 14, 2016

/s/ James P. Jones
United States District Judge